**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 3528 of 1998**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE JAYANT PATEL**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**THAKORE DHARMABHAI MOHANJI - Appellant(s)**
**Versus**
**SURESHKUMAR BHUBHATLAL SONI - Defendant(s)**

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**Appearance :**
MR MOHANBHAI DESAI for Appellant(s) : 1,
MR ASHOK N PARMAR for Defendant(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL**

**Date : 19/10/2007**

**ORAL JUDGMENT**

1. The short facts of the case appear to be that on 10.4.1989 when the claimant while on duty as a peon in the Octroi Naka on the highway crossing

attempted to stop the respondent – original opponent moving on his Scooter having registration No.GUT-6888 with a carton of electric fans over for which octori was not paid. The scooter was stopped for a while and thereafter the respondent started to run away whereupon the claimant chased him and after inquiry, as the respondent was to run away on scooter and as the claimant was standing in front of him, the wheel of the scooter ran over the right leg of the claimant and he sustained injuries. The claim petition was filed being MACP No.543 of 1989 before the Tribunal for recovery of the compensation of Rs.50,000/- against the respondent. The Tribunal after adjudication dismissed the claim petition and it is under these circumstances the present appeal before this Court.

2. Heard Mr.Desai, learned Counsel for the appellant and Mr.Ashok N. Parmar, learned Counsel for the respondent. Considered the judgement and award of the Tribunal as well as the record and proceedings with the paper book

of the Tribunal.

3. It appears that the Tribunal found that as the act of causing alleged injuries was an intentional act, it cannot be said as an accident and, therefore, the claim petition for compensation would not lie before the Tribunal and hence, the claim was not maintainable.

4. The examination of the record and proceedings shows that as per the claim petition, it was stated that the respondent started scooter without giving any warning and since the scooter was started at a stroke by the respondent, the scooter had dashed on the leg of the claimant and he sustained injuries. In the deposition of the claimant Ex.16, he stated that the respondent by stating that he would come back for payment of the octroi, all of a sudden, started scooter and since the claimant was standing in front of him, the scooter dashed on his leg and he sustained injuries. In the cross-examination he denied that he had mentioned in the complaint that the scooter was intentionally dashed with the claimant.

5. The factum of receiving injuries by the claimant is not in dispute, nor is it in dispute that the claimant was on duty as a peon at the Octroi Naka and his duty was to assist the concerned Officer of the Municipality in collection of octroi, including that of chasing the person, who had passed over without payment of octroi. Therefore, it appears that the injuries have been caused while he was on duty as a peon of Municipality. Therefore, when the respondent was to move without payment of octroi by stating that he would come back for paying the octroi, the respondent started his scooter and the injuries were caused to the claimant. Therefore, the vehicle namely the scooter was in motion and the injuries were caused. It may be the essential purpose of the respondent to go away, but the same was on scooter and at that stage, since the claimant was standing in front of him, the scooter dashed with the claimant.

6. At this stage it would be worthwhile to refer to the decision of the Apex Court in case of “**Rita Devi and Ors. V New Indian Assurance Company**

**Limited and Anr.", reported in 2000(5) SCC, 113**, wherein the Apex Court had an occasion to consider the question of jurisdiction of the Tribunal in a case where the driver of rickshaw was murdered and the rickshaw was stolen. The Apex Court in the said decision, inter alia, observed at para 10 to 18 as under:-

*10. The question, therefore, is can a murder be an accident in any given case? There is no doubt that 'murder', as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a 'murder' which is not an accident and a 'murder' which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominent intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simplicitor, while if the cause of murder or act of murder was originally not intended and the*

*same was caused in furtherance of any other felonious act then such murder is an accidental murder.*

*11. In Challis v. London and South Western Railway Company, (1905) 2 KB 154, the Court of Appeal held where an engine driver while driving a train under a bridge was killed by a stone wilfully droped on the train by a boy from the bridge, that his injuries were caused by an accident. In the said case, the Court rejecting an argument that the said incident cannot be treated as an accident held :*

*"The accident which befell the deceased was, as it appears to me, one which was incidental to his employment as an engine driver in other words it arose out of his employment. The argument for the respondents really involves the reading into the Act of a proviso to the effect that an accident shall not be deemed to be within the Act, if it arose from the mischievous act of a person not in the service of the employer. I see no reason to suppose that the Legislature intended so to limit the operation of the Act. The result is the same to the engine driver, from whatever cause the accident happened; and it does not appear to me to be any*

*answer to the claim for indemnification under the Act to say that the accident was caused by some person who acted mischievously.*

*12. In the case of Nisbet v.Rayne and Burn, (1910) 2 KB 689, where a cashier, while travelling in a railway to a colliery witha large sum of money for the payment of his employers' workmen, was robbed and murdered. The Court of Appeal held :*

*"That the murder was an "accident" from the standpoint of the person who suffered from it and that it arose "out of" an employment which involved more than the ordinary risk, and consequently that the widow was entitled to compensation under the Workmen's Compensation Act, 1906. In this case the Court followed its earlier judgment in the case of Challis (supra). In the case of Nisbet, the Court also observed that "it is contended by the employer that this was not an "accident" within the meaning of the Act, because it was an intentional felonious act which caused the death, and that the word "accident" negatives the idea of intention. In my opinion, this contention ought not to prevail. I think it was an accident from the point of view of Nisbet, and that it makes no*

*difference whether the pistol shot was deliberately fired at Nisbel or whether it was intended for somebody else and not for Nisbet."*

*13. The judgment of the Court of Appeal in Nisbet's case (1910 (2) KB 689) was followed by the majority judgment by the House of Lords in the case of Board of Management of Trim Joint District School v. Kelly, (1914 AC 667).*

*14. Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the auto rickshaw, was duty bound to have accepted the demand of fare paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the auto rickshaw and in the course of achieving the said object of stealing the auto rickshaw, they had to eliminate the driver of the auto rickshaw then it cannot but be said that the death so caused to the driver of the auto rickshaw was an accidental murder. The stealing of the auto rickshaw was the object of the felony and the murder that was caused in the said process of stealing the auto rickshaw is only incidental to the act of stealing of the*

*auto rickshaw. Therefore, it has to be said that on the facts and circumstances of this case the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing the theft of the auto rickshaw.*

*15. Learned counsel for the respondents contended before us that since the Motor Vehicles Act has not defined the word 'death' and the legal interpretations relied upon by us are with reference to definition of the word 'death' in Workmen's Compensation Act the same will not be applicable while interpreting the word 'death' in Motor Vehicles Act because according to her, the objects of the two Acts are entirely different. She also contends on the facts of this case no proximity could be presumed between the murder of the driver and the stealing of the auto rickshaw. We are unable to accept this contention advanced on behalf of the respondents. We do not see how the object of the two Acts, namely, the Motor Vehicles Act and the Workmen's Compensation Act are in any way different. In our opinion, the relevant object of both the Acts are to provide compensation to the victims of accidents. The only difference between the two enactments is that so far as the*

*Workmen's Compensation Act is concerned, it is confined to workmen as defined under that Act while the relief provided under Chapters X to XII of the Motor Vehicles Act is available to all the victims of accidents involving a motor vehicle. In this conclusion of ours we are supported by Section 167 of the Motor Vehicles Act as per which provision, it is open to the claimants either to proceed to claim compensation under the Workmen's Compensation Act or under the Motor Vehicles Act. A perusal of the objects of the two enactments clearly establishes that both the enactments are beneficial enactments operating in the same field, hence judicially accepted interpretation of the word 'death' in Workmen's Compensation Act is, in our opinion, applicable to the interpretation of the word death in the Motor Vehicles Act also.*

*16. In the case of Shivaji Dayanu Patil v. Vatschala Uttam More, (1991) 3 SCC 530 : (1991 AIR SCW 1867 : AIR1991 SC 1769) this Court while pronouncing on the interpretation of Section 92A of the Motor Vehicles Act, 1939 held as follows (para 12 of AIR ) :*

*"Section 92-A was in the nature of a beneficial*

*legislation enacted with a view to confer the benefit of expeditious payment of a limited amount by way of compensation to the victims of an accident arising out of the use of a motor vehicle on the basis of no fault liability. In the matter of interpretation of abeneficial legislation the approach of the courts is to adopt a construction which advances the beneficient purpose underlying the enactment in preference to a construction which tends to defeat that purpose."*

*17. In that case in regard to the contention of proximity between the accident and the explosion that took place this Court held :*

*"This would show that as compared to the expression "caused by", the expression "arising out of" has a wider connotation. The expression "caused by" was used in Sections 95 (1)(b)(i) and (ii) and 96(2)(b)(ii) of the Act. In Section 92-A, Parliament however, chose to use the expression "arising out of" which indicates that for the purpose of awarding compensation under Sec-tion 92-A, the casual relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement is not required to be direct and proximate and it*

*can be less immediate. This would imply that accident should be connected with the use of the motor vehicle but the said connection need not be direct and immediate. This construction of the expression "arising out of the use of a motor vehicle" in Sec. 92-A enlarges the field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment."*

*18.In the instant case, as we have noticed the facts, we have no hesitation in coming to the conclusion that the murder of the deceased (Dasarath Singh) was due to an accident arising out of the use of motor vehicle. Therefore, the trial Court rightly came to the conclusion that the claimants were entitled for compensation as claimed by them and the High Court was wrong in coming to the conclusion that the death of Dasarath Singh was not caused by an accident involving the use of motor vehicle.*

7. More or less, similar is the situation in the present case namely; that the intention was to run away and incidentally while running away to make use of the scooter, the injury was caused

to the claimant. Therefore, it would not be a case of no jurisdiction with the Tribunal, but considering the facts and circumstances, it can be said that the claim petition before the Tribunal was maintainable and, therefore, the Tribunal has committed error in concluding that the claim petition was not maintainable.

8. The next aspect deserves to be examined is on the question of quantum. The evidence of the claimant is that his salary was Rs.1,200/- per month and on account of the accident he was unable to go for duty for one month. Therefore, the amount of Rs.1,200/- can be said as towards actual loss of income. There is further evidence on record of the claimant that he had to incur the expenses of Rs.3,000/- to Rs.4,000/- for hospitalization and, therefore, considering the facts and circumstances, the amount of Rs.3,000/- towards medical expenses can be said as reasonable. There is also evidence on record of the claimant that he was advised by the doctor to take fruits and nutritious food for one month and he had to

spend every day Rs.50/- and, therefore, if the said amount is calculated, it would be about Rs.1,500/- towards food and nutrition during the treatment.

9. The doctor has opined for disability of the lower limb of 17.2%. Therefore, for the whole body disability, it would be about 8.5%. If the monthly income is taken into consideration of Rs.1,200/-, yearly it would be Rs.14,400/-. Therefore, the amount of disability at the rate of 8.5% would Rs.1,224/- per year. The claimant was serving as a peon and he was aged 32 years and injuries had direct nexus to the functional disability. Therefore, keeping in view the age of the claimant and the nature of injury, it would be just and proper to apply the multiplier of 12, keeping in view the reduction of potentiality of the person to work in the field of employment. Hence, the claimant would be entitled to an amount of Rs.14,688/- towards disability. Towards pain, shock and suffering for non-grievous injuries, even as per the Schedule, the amount is Rs.1,000/-. Hence, the

claimant would be entitled to the said amount.

10. Under these circumstances, the claimant would be entitled to the following compensation:-

**(a)** Rs.1,200/- towards actual loss of income.

**(b)** Rs.3,000/- towards expenses of hospitalization and medical treatment.

**(c)** Rs.1,500/- towards food and nutrition during the treatment.

**(d)** Rs.14,688/- towards disability and Rs.1,000/- towards pain, shock and suffering.

**Total Rs.21,388/-.**

11. Considering the facts and circumstances, it would be just and proper to award interest at the rate of 9% per annum from the date of application until the actual amount is realised.

12. Hence, appeal is allowed to the aforesaid extent. Decree accordingly.

19.10.2007 **(Jayant Patel, J.)**

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